

Message Text

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SUBJ: JUSTICE DEPARTMENT DISCUSSIONS WITH CANADIANS
IN CONNECTION WITH POTASH ANTITRUST CASE

1. YOU INFORMED US BY TELEPHONE YESTERDAY SEPTEMBER 9 THAT THE JUSTICE DEPARTMENT WISHES TO QUESTION A NUMBER OF CANADIAN CITIZENS, INCLUDING PRESENT AND PAST PROVINCIAL OFFICIALS IN SASKATCHEWAN, FEDERAL JUDGES, AND FEDERAL OFFICIALS, IN CONNECTION WITH THE PREPARATION OF THE POTASH ANTITRUST CASE.

2. CLEARLY SUCH APPROACHES, TO WHICH THE INDIVIDUALS CONCERNED WOULD BE FREE TO RESPOND OR NOT, ARE CONSISTENT WITH STANDARD U.S./CANADIAN PRACTICE AND OECD CODES. HOWEVER, I BELIEVE THAT IN THIS CASE WE SHOULD CAREFULLY CONSIDER WHETHER THE INFORMATION TO BE RECEIVED COULD JUSTIFY THE ADVERSE PUBLICITY AND COMMENT THESE APPROACHES WILL SURELY GENERATE.

3. AS YOU KNOW, JUSTICE'S DECISION TO RELEASE THE NAMES OF UNINDICTED CO-CONSPIRATORS (A DECISION TAKEN WITHOUT CONSULTATION WITH THE STATE DEPARTMENT OR FOREWARNING TO AUTHORITIES HERE, AND IN CONTRAVENTION TO UNDERSTANDINGS BETWEEN ASSISTANT ATTORNEY GENERAL KAUPER, LEGAL ADVISOR LEIGH AND MYSELF) RESULTED IN A SHARP REACTION IN SASKATCHEWAN AND OTTAWA. IN
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MOST CASES I SHOULD NOT BE CONCERNED BY SUCH REACTION,

BUT IN THIS ONE IT HAS HAD THE EFFECT OF UNITING SASKATCHEWAN AND TO A DEGREE OTTAWA OPINION BEHIND SASKATCHEWAN'S TAKEOVER OF U.S. POTASH PROPERTIES. THIS OCCURRED AT A TIME WHEN WE WERE BEGINNING TO BUILD IN CONSTRAINTS ON REGINA THAT WOULD HAVE MADE IT DIFFICULT FOR SASKATCHEWAN TO GO BEYOND VOLUNTARY PURCHASES OF U.S. COMPANIES.

4. QUESTIONING OF WITNESSES, SUCH AS JUSTICE NOW PROPOSES, WILL LEAD TO A NEW PUBLIC OUTCRY. IT COULD ESCALATE INTO A SIGNIFICANT PUBLIC IRRITANT IN CANADA-U.S. RELATIONS.

5. THUS I REQUEST THAT YOU RECONSIDER WHAT INFORMATION COULD BE HOPED TO BE OBTAINED FROM SUCH QUESTIONING, AND WHETHER IT IS WORTH THE COST. IN THIS REGARD, EXTAFF UNDER SECRETARY ROBINSON TOLD ME THIS MORNING THAT SASKATCHEWAN WILL NOT "BLESS" CONTACTS WITH PRESENT OR PAST OFFICIALS; THAT THE MINISTRY OF JUSTICE "STRONGLY PREFERS" THAT JUDGES NOT BE INTERROGATED; AND THAT FEDERAL OFFICIALS WILL BE INSTRUCTED THAT ANY RESPONSE IS AN INDIVIDUAL DECISION, BUT THAT CONFIDENTIAL MATERIAL MAY NOT BE DISCUSSED WITHOUT GOVERNMENT APPROVAL.

6. IF YOUR DECISION IS TO GO AHEAD ANYWAY, IT IS IMPORTANT TO DO SO IN A WAY WHICH CAUSES THE LEAST FRICTION. WE SHOULD GIVE THE CANADIAN GOVERNMENT SEVERAL MORE DAYS' NOTICE (THROUGH NEXT WEEK) SO THAT IT CAN COMMUNICATE ITS VIEWS ON THE ISSUE TO THE PERSONS CONCERNED. IN ADDITION, WE SHOULD MAKE CLEAR THAT SUCH CONVERSATIONS COULD TAKE PLACE ON U.S. OR CANADIAN SOIL, ACCORDING TO THE WISHES OF THE PERSON CONTACTED.

7. ACTIONS LIKE THE JUSTICE DEPARTMENT HAS TAKEN OR PROPOSES TO TAKE IN THE POTASH CASE, UNCOORDINATED WITH THE STATE DEPARTMENT AND CANADIAN OFFICIALS AND SPRUNG WITHOUT NOTICE, CAN CAUSE MAJOR PROBLEMS IN RELATIONS WITH CANADA. IF THE ANTITRUST DIVISION IS LIMITED OFFICIAL USE

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NOT PREPARED TO COORDINATE ITS ACTIONS AND TO MAKE THE EFFORT OF SIMPLE GOOD PLANNING TO ALLOW TIME FOR DISCUSSION AND PREPARATION, I WILL WISH TO KNOW THIS SO THE ISSUE CAN BE TAKEN UP AT ATTORNEY GENERAL LEVEL AND RESOLVED.
ENDERS

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